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Judge Mary Alice Theiler

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AT SEATTLE
CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY DEPUTY

97-CV-00255-M

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,)	No. C97-0255W
)	
Plaintiff,)	RECEIVER'S MOTION TO APPROVE
)	FEEES AND COSTS OF RECEIVER, HIS
v.)	ACCOUNTANTS, AND HIS
)	ATTORNEYS
PHILIP E. HARMON, <u>et al.</u>)	
)	NOTE FOR MOTION:
Defendants.)	October 24, 2003

MOTION

Robert Fuhrman, the court-appointed receiver in this case, moves for an order approving the administrative fees and costs incurred in connection with the administration and liquidation of assets owned by Capital Investors Limited Partnership ("CIL") and the Family Investment Company ("FIC"), and authorizing payment of these fees, in amounts set forth herein. These fees and costs were incurred by the Receiver, by his accountants, PricewaterhouseCoopers, and by his lawyers, Keller Rohrbach L.L.P. The motion is made pursuant to Paragraph 6 of the Order Detailing Powers of Receiver (entered on April 25, 1997) and the Order to Expand Receivership (entered on July 1, 1997).

The factual basis of the motion is set forth in the declarations of Robert Fuhrman ("Fuhrman") and John Mellen ("Mellen"). A copy of this motion and all supporting documents is being mailed to all creditors and other interested parties.

RECEIVER'S MOTION TO APPROVE FEES OF
RECEIVER, ACCOUNTANTS, AND ATTORNEYS
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ORIGINAL

PROCEDURE TO RESPOND TO MOTION

The Note for Motion date set forth in the heading (October 24, 2003) is not a date on which anyone should appear in court. This date merely establishes the deadlines for responding to the motion. There is no obligation to respond to this motion, but if a creditor or other interested party chooses to do so, the requirements for responding are set forth in this section. These requirements must be strictly followed.

The original of any response to this motion must be delivered to the Clerk of the Court for the United States District Court for the Western District of Washington, 1010 5th Avenue, Room 215, Seattle, WA 98104. A copy must be delivered to Judge Theiler at the same street address. Finally, a copy must also be delivered to the lawyer for the Receiver, John Mellen, at Keller Rohrbach LLP, 1201 Third Avenue #3200, Seattle, WA 98101.

The deadlines for delivering responses to this motion are as follows. If a response is mailed, it must be mailed no later than Friday, October 14, 2003. If the response is hand-delivered, it may be delivered no later than Monday, October 17, 2003. Any reply to a response is due on Thursday, October 23, 2003. If Judge Theiler subsequently determines that oral argument is needed, she will schedule oral argument, and notice of the date and time of oral argument will be provided.

If any interested party has any objection to the proposed payment of the fees and expenses of the Receiver, his accountants, or his attorneys, as set forth in this motion, it is important that the response to the motion be submitted in compliance with the requirements set forth above, or the Court may order the fees and costs to be paid as provided in this motion without consideration of the response.

MEMORANDUM

A. Background.

On July 1, 1997, the Court entered an Order to Expand the Receivership to include CIL and FIC. The Receiver, with the assistance of his accountants and his attorneys, has engaged in

activities to manage and liquidate assets owned by CIL and FIC. The fees and costs incurred in connection with the CIL and FIC assets should be paid from the proceeds of those assets. Along with this motion for approval of fees and costs, the Receiver is also filing a motion for approval of the distribution to creditors of the remaining funds generated in the CIL and FIC Receivership.

Detailed records of the services performed by the Receiver, his accountants, and his attorneys and the charges for those services are attached to the declarations of Fuhrman and Mellen. The Receiver is requesting the Court to approve fees and costs in the following amounts: (1) Receiver Robert Fuhrman fees and costs of \$81,578.65; (2) Accountants PricewaterhouseCoopers LLP fees and costs of \$57,855.23; and (3) Attorneys Keller Rohrbach LLP fees and costs of \$152,216.24. So that the overall scope of the work can be reviewed, the records submitted cover all work on Receivership issues, including time that was previously billed, approved for payment by this court, and paid. As shown in the detail presented below, these prior payments are deducted from the amounts requested. The amounts stated above are the net numbers, after deducting prior payments made to the Receiver, his accountants, and his attorneys.

The Receiver also requests authorization to withhold an additional \$25,000 for payment of future fees and costs anticipated in the winding-up of the Receivership. This request is discussed in the motion to distribute funds among all creditors.

A summary of the services provided by the Receiver and his professionals in administering and liquidating the CIL and FIC assets follows.

B. Summary of Services Provided by Receiver, His Accountants, and His Counsel

Due to the illegal nature of the activities in which Philip Harmon was engaged, the Receivership has been very complex. The Receiver, his accountants, and his lawyers worked with the FBI and others to sort out the assets held by the various entities established by Harmon. Then, in the CIL and FIC Receivership, the particularly difficult task of realizing on these assets was undertaken.

Assets administered by the Receiver were the following: (1) 130 E. North Camino No. 8, Camino Island, WA; (2) 9008, 9010 271st N.W., Stanwood, WA; (3) 8311 Cedarhome, Stanwood, WA; (4) 8631 270th N.W., Stanwood, WA; (5) 27031 104th Dr., Stanwood, WA; (6) 9504 269th Pl., Stanwood, WA; (7) 27128 104th Dr., Stanwood, WA; (8) 230 N. Camino Ridge, Camino Island, WA; (9) 2008, 2014 E. College, Mt. Vernon, WA; (10) 130 E. North Camino No. 6, Camino Island, WA; (11) Utsalady Water System, Camino Island, WA; (12) 130 E. North Camino No. 15, Camino Island, WA; and (13) a lawsuit against John Duke.

Almost all of the real estate parcels had substantial issues to resolve before they could be sold. A fundamental problem was to establish clear title to all of the parcels. The title company was understandably reluctant to insure transactions in which Harmon or any of his entities were involved until all possible issues were resolved. Between Harmon's dishonesty and his sloppiness, numerous transactions regarding the parcels required close attention before the properties could be insured and sold. Also, all of the secured claims against the properties required close review. In addition, various parcels had problems with environmental issues, access, landlord-tenant issues, and numerous other matters. Until these issues could be resolved and the properties sold, the Receiver and his lawyers spent substantial amounts of time dealing not only with the extraordinary issues raised by Harmon's actions, but also with the ordinary issues that any property owner faces. In addition, various accounting issues arose with respect to the liquidation of properties, the preparation of tax returns, and the lawsuit that was filed against John Duke.

Among the services performed by the receiver, his accountants, and his counsel regarding the CIL and FIC properties were the following: (1) investigate CIL and FIC assets; (2) segregate CIL and FIC assets from assets owned by other Harmon entities; (3) negotiate settlements with creditors of CIL and FIC; (4) review and resolve various tax issues and prepare multiple tax returns; (5) investigate and resolve numerous complex issues regarding title to the properties; (6) investigate and address legal and factual issues of claims of secured creditors; (7) investigate and

1 address legal and factual issues of claims of unsecured creditors; (8) retain real estate brokers
2 and work with them to liquidate assets; (9) lease the premises pending sale and deal with
3 landlord tenant issues; (10) draft contracts to sell real estate that addressed receivership issues in
4 general and issues particular to the individual parcels of real estate, (11) deal with complex
5 environmental issues; (12) deal with access issues; (13) deal with complex issues associated with
6 the Utsalady water system owned by CIL, including water quality issues, disputes with users of
7 the water system, and the sale of the water system; (14) resolve issues related to sale of real
8 property that included a mobile home; and (15) prepare a plan for distribution of the
9 Receivership funds. In addition, the lawsuit against Duke was filed, and eventually settled for
10 \$100,000.

11 The sale of assets is now complete, and as mentioned above, in a separate motion the
12 Receiver is seeking leave of the Court to distribute the funds held in the Receivership to the
13 various creditors.

14 **C. Benefits Provided to Creditors of CIL**

15 The services of the receiver and his professionals have provided multiple benefits to the
16 creditors of CIL and FIC. Proceeds from the administration and liquidation of CIL's and FIC's
17 assets total \$1,313,384. Of that amount, \$798,314 has already been distributed, including
18 payments to secured creditors of \$518,658. As part of his separate motion to distribute
19 remaining funds to creditors, the Receiver is recommending that additional payments to secured
20 creditors be made in the approximate amount of \$70,000.

21 Unsecured creditors and secured creditors holding second lien positions have benefited
22 through the efforts of the Receiver, because without these efforts, the properties could not have
23 been sold. All of them faced title problems, and many of them faced other problems. Virtually
24 all of the properties were at risk of foreclosure by senior lienholders. Through the efforts of the
25 Receiver and the professionals working with him, there were no foreclosures, and eventually all
26 of the properties were marketed and sold at their fair market value, thus assuring that proceeds

1 were preserved for junior lienholders and unsecured creditors. After payment of secured
2 creditors, costs of sale, management fees, and other expenses, the Receiver holds \$515,070 in his
3 CIL accounts as of August 31, 2003. After payment of the fees and expenses of the Receiver and
4 his professionals as requested in this motion, including retention of \$25,000 for payment of
5 future fees and costs, approximately \$200,000 will remain for further distribution to creditors.

6 **C. Summary of Individual Hours of Services Performed for CIL**

7 The receiver and his professionals performed more than 1,500 hours of services for CIL.
8 The number of hours worked by each professional, and the hourly rates charged, are stated
9 below. It should be noted that all of the professionals charged this matter out at their standard
10 hourly rates or less than those rates. Also, when there is a substantial delay before payment, as
11 in this case, it is common either to add interest or to charge all time at current hourly rates, in
12 order to compensate the persons working for the receivership for the delay. However, no interest
13 has been charged, and hourly rates have not been increased from the rates in effect at the time
14 that the work was done to current rates.

15 **D. Fees Earned by the Receiver, Robert Fuhriman**

16 The services of Robert Fuhriman are shown in two categories. The first category is for
17 services performed during the time when Fuhriman was first given responsibility for the
18 investigation and administration of various Harmon enterprises. At that time, he was performing
19 services in three areas: (1) trustee for Harmon's bankruptcy estate, (2) receiver for health care
20 issues, and (3) receiver for CIL and FIC. Those services overlapped each other and were not
21 separately invoiced. After reviewing the work, it was determined that the work was equally
22 necessary and equally useful to all three areas. The charges for these services have, therefore,
23 been divided equally among the three areas, and Fuhriman seeks payment of one-third of the fees
24 charged for those shared services.

25 The second category is for the services provided exclusively for CIL and FIC matters.

26 **1. One-Third of Shared Services (Exhibit A to Fuhriman declaration)**

Name	Hourly Rate	Hours	Amount
L. DeArias	\$205	1.90	\$ 389.50
K. Mordy	\$205	29.50	\$ 6,047.50
R. Fuhriman	\$196	194.50	\$ 38,110.00
M. Hubbard	\$ 40	3.00	\$ 120.00
TOTAL BILLED		228.90	\$ 44,667.00

ONE-THIRD CHARGED TO CIL/FIC \$ 14,889.00

2. CIL/FIC Services Only (Exhibit B to Fuhriman declaration)

R. Fuhriman	\$205	362.55	\$ 74,277.75
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Costs			132.90
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AMOUNT CHARGED 100% IN CIL/FIC \$ 74,410.65

TOTAL OWED TO RECEIVER \$ 89,299.65

Less amount previously paid (7,721.00)

BALANCE OWED TO RECEIVER ON CIL/FIC \$ 81,578.65

E. Fees Earned by the Accountants, PricewaterhouseCoopers LLP

The fees of the accountants are similarly divided into two categories.

1. One-Third of Shared Services (Exhibit C to Fuhriman declaration)

Name	Hourly Rate	Hours	Amount
K. Mordy	\$205	19.60	\$ 4,018.00
J. French	\$141	113.10	\$ 15,930.00
M. Hubbard	\$ 40	12.25	\$ 490.00
TOTAL BILLED		144.95	\$ 20,438.00

ONE-THIRD CHARGED TO CIL/FIC \$ 6,813.00

2. CIL/FIC Services Only (Exhibit D to Fuhriman declaration)

Name	Hourly Rate	Hours	Amount
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RECEIVER'S MOTION TO APPROVE FEES OF
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1	S. Couper	\$236	8.45	\$ 1,998.25
	J. Kuchin	\$205	.25	\$ 51.25
2	K. Mordy	\$205	11.00	\$ 2,255.00
	J. Dubeck	\$205	16.25	\$ 3,331.25
3	J. Ryse	\$194	1.20	\$ 232.80
	M. Hearne	\$180	4.00	\$ 720.00
4	T. Mickey	\$169	68.65	\$ 11,580.75
5	T. Boll	\$150	2.00	\$ 300.00
	J. French	\$150	45.30	\$ 6,801.00
6	K. Fazekas	\$147	5.50	\$ 807.50
	M. Samson	\$129	63.80	\$ 8,199.00
7	M. Ross	\$175	23.00	\$ 4,025.00
	D. Rhine	\$160	.50	\$ 80.00
8	M. Krueger	\$150	.60	\$ 90.00
9	L. Briere	\$130	14.30	\$ 1,859.00
	A. Seidlitz	\$125	64.00	\$ 7,985.00
10	J. Seng	\$115	7.10	\$ 819.00
	Y. Kim	\$ 70	38.00	\$ 2,660.00
11	M. Street	\$ 70	1.40	\$ 98.00
	L. Moe	\$ 70	.70	\$ 49.00
12	J. Munson	\$ 41	7.25	\$ 300.00
13	D. Hall	\$ 40	1.75	\$ 70.00
14	TOTAL FEES		591.45	\$ 54,312.30
15	Costs			25.93
16	AMOUNT CHARGED 100% TO CIL/FIC			\$ 54,338.23
17	TOTAL OWED TO PRICEWATERHOUSECOOPERS			\$ 61,151.23
18	Less amount previously paid			(\$ 3,296.00)
19	BALANCE OWED TO PRICEWATERHOUSECOOPERS			\$ 57,855.23

21 **F. Fees Earned by Attorneys, Keller Rohrbach LLP**

22 The fees earned by Keller Rohrbach were divided between time spent specifically on the
 23 Duke litigation and time spent on all other issues, primarily the real estate issues. Time spent on
 24 the real estate matters is described on Exhibits A, B, and C to the Mellen Declaration. Exhibit A
 25 covers the time period from the inception to September 30, 1997. Exhibit B covers the time
 26

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period from October 1, 1997 to March 31, 1998. Exhibit C covers the time period from April 1, 1998 to September 14, 2003. The time spent specifically on the Duke litigation is described in Exhibit D.

The total fee for the time billed on real estate and other administrative matters is \$135,972.50. The amount previously paid toward this bill is \$9,883.00. The total fee for the time spent specifically on the Duke litigation is \$22,272.00. No payments have been made on this work. The balance due is \$148,361.50.

A breakdown of the time and rates by attorney is as follows:

Name	Hourly Rate	Hours	Amount
John Mellen	\$275	72.30	\$ 19,882.50
	\$250	104.10	\$ 26,025.00
	\$240	45.90	\$ 24,984.00
	\$210	88.10	\$ 18,501.00
	\$200	213.10	\$ 42,620.00
Fred Schoepflin	\$250	2.90	\$ 725.00
	\$225	5.60	\$ 1,260.00
	\$210	99.50	\$ 20,895.00
Lawrence Glosser	\$125	90.40	\$ 11,300.00
Mark Griffin	\$200	.50	\$ 100.00
	\$175	4.30	\$ 752.50
Kim Coghlan	\$165	3.20	\$ 528.00
Scott Henderson	\$150	2.90	\$ 435.00
Darla Marshall	\$ 75	15.90	\$ 1,192.50
Vonnie Bayard	\$ 60	16.50	\$ 990.00
Abigail Daquiz	\$100	5.50	\$ 550.00
Donna Ames	\$ 50	7.00	\$ 350.00
Morten Brinkman	\$100	.30	\$ 30.00
	\$ 60	.40	\$ 24.00
T. Thirkield	\$ 60	1.00	\$ 60.00
TOTAL FEES		794.20	\$158,244.50
Costs			\$ 4,613.75
Less amount previously paid			(\$ 9,883.00)

RECEIVER'S MOTION TO APPROVE FEES OF
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1 BALANCE OWED TO KELLER ROHRBACK \$152,975.25

2 **H. Summary**

3 The receiver requests the Court to approve payment of all professional fees and costs in
4 the amounts requested in this motion and to approve retention by the receiver of \$25,000 for
5 payment of future fees and costs.
6

7 DATED this 22 day of September, 2003.

8 KELLER ROHRBACK L.L.P.

9 By: 
10 John Mellen, WSBA #12373
11 Frederick Schoepflin, #WSBA #19060
12 Attorneys for Receiver
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